

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 7840, 7844,  
7846, 7848, 8569 of 1997  
and  
SPECIAL CIVIL APPLICATION No 5326 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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GOVINDBHAI RAMANLAL KACHHIYA

Versus

D N PANDEY

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Appearance:

MR BM MANGUKIYA for Petitioners

MT TH SOMPURA, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/08/98

CAV JUDGEMENT

In Special Civil Application Nos. 7840, 7844, 7846 and 7848 of 1997, the petitioners have challenged the orders dated 30.6.1997 passed by the Collector, Panchmahals at Godhra cancelling his previous orders granting permission under Section 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") in respect of four parcels of

land bearing Survey Nos. 150, 151, 153 and 154 in village Vitthalpura, Taluka Halol in Panchmahals District. The other two petitions challenge consequential orders.

2. The facts leading to filing of this group of petitions, as averred by the petitioners, are as under :-

2.1 The petitioners residing at village Kanjari, in Halol Taluka of Panchmahals district were owners of agricultural lands bearing Survey Nos. 150, 151 and 152 in village Vitthalpura. Survey Nos. 150 and 151 were new tenure lands and, therefore, under the provisions of section 43 of the Act the said lands could not be transferred or disposed of without previous permission of the Collector and in case of transfer of such lands, the holders would be required to pay premium to the State Government on the amount of difference between the price at which the holders would be selling the lands and the price at which the holders had purchased the lands. In October, 1995 the petitioners submitted their applications in respect of Survey Nos. 150 and 151 requesting the Collector to grant permission under Section 43 of the Act.

Pursuant to the aforesaid applications, the Collector informed the petitioners in December, 1996 that the amounts fixed by the Collector therein shall be deposited by the petitioners with the Talati of the village Vitthalpura as a premium for the lands. The petitioners paid the respective amounts to the Talati on 3.1.1997. On 21.1.1997 and 27.1.1997 the Collector passed orders granting permission under Section 43 of the Act for plotting the lands for selling them to put up construction thereon. The lands were thus freed from the restrictions earlier imposed in respect thereof under Section 43 of the Act.

2.2 The land bearing Survey No. 153, a new tenure land was owned and possessed by Shanabhai Mathurbhai Kachhiya. The land bearing Survey No. 154, also a new tenure land, was owned and possessed by Govindbhai Ramanbhai Kachhiya and five others. Since the petitioners wanted to purchase the said new tenure lands, the respective owners of Survey Nos. 153 and 154 applied to the Collector under Section 43 of the Act for permission to sell the said lands to the petitioners. On 21.1.1997, the Collector granted the permission in view of the payment of premium determined by the Collector. On the strength of the said permission, the petitioners purchased Survey Nos. 153 and 154 by presenting the sale

deeds for registration on 28.1.1997.

2.3 Thereafter, at the request of the petitioners, the Mamlatdar, Halol passed order dated 12.3.1997 consolidating all the five survey numbers and gave them a new survey No. 150. On 2.5.1997, the Talati of the village posted the mutation entries in respect of the above lands on the basis of the above orders and the said entries were certified on 4.6.1997.

2.4 Thereafter the petitioners received orders dated 30.6.1997 of the Collector, Panchmahals cancelling his previous orders dated 21.1.1997/27.1.1997 on the ground that the previous orders dated 21.1.1997/27.1.1997 were passed on account of fraud (\_\_\_\_\_) in the matter of preparation of proposal by the subordinate office for obtaining the aforesaid permission for conversion of land under Section 43 of the Act and, therefore, the orders were required to be cancelled. Consequently the Mamlatdar passed order dated 2.7.1997 cancelling the amalgamation order dated 12.3.1997.

3. The first four petitions in this group challenge the aforesaid orders dated 30.6.1997, Special Civil Application No. 8569 of 1997 challenges the Mamlatdar's order dated 2.7.1997 cancelling the amalgamation order. In view of the ground given in the impugned orders dated 30.6.1997, the petitioners have made averments in the petitions making reference to the sale instances of the last five years and have contended that the price was rightly fixed on the basis of the said instances which was sent by the Talati to the Mamlatdar on 1.12.1995 and that the price fixed in the orders dated 21.1.1997/27.1.1997 at the rate of Rs. 110/- per sq.mtrs. was also in consonance with the award of the Land Acquisition Officer in respect of several survey numbers of Halol.

It is further submitted in the petitions that in any view of the matter the impugned orders are illegal as they were passed without issuing any show cause notice or without affording the petitioners any opportunity of being heard.

4. The petitions were admitted on 22.9.1997 and thereafter on 19.11.1997, the Court granted interim stay of operation of the impugned orders dated 30.6.1997 of the Collector on condition that the petitioners shall maintain status quo regarding the lands in question and that the petitioners shall not transfer or alienate the property in question to anyone during pendency of the

petitions.

5. On 21.4.1997 the petitioners had in the meantime applied for N.A. permission i.e. for permission to make non-agricultural use of the lands in question amalgamated into New Survey No. 150 on the basis of the previous orders dated 21.1.1997/27.1.1997 granting permission under Section 43 of the Act and on the basis of the amalgamation order dated 12.3.1997. The Collector rejected the application dated 21.4.1997 as per his communication dated 5.7.1997 on the ground that the previous orders dated 21.1.1997/27.1.1997 were cancelled on 30.6.1997 and that, therefore, the lands still remained subject to the restrictions under Section 43 of the Act and, therefore, N.A. permission cannot be granted. The petitioners thereupon submitted their application dated 29.11.1997 pointing out that in view of the stay orders granted by this Court in the first five petitions, the Collector was required to consider the application for N.A. permission. The petitioners have also produced a copy of the letter dated 6.4.1998 (Annexure "H" to SCA No. 5326 of 1998) from the Deputy Minister, Forest and Environment Department of the State Government to the Collector requesting the Collector to consider the petitioners' applications in accordance with the rules and thereafter to inform the Deputy Minister accordingly. The Collector thereupon in reply informed the Deputy Minister that since this Court had passed interim orders requiring the petitioners to maintain status quo regarding the lands in question until final disposal of the Special Civil Applications, it was not possible to consider the petitioners' application for N.A. permission. The petitioners have, therefore, filed Special Civil Application No. 5326 of 1998 challenging the aforesaid letter dated 24.6.1998. When the said petition came up for hearing before this Court, it was considered expedient to hear and decide all the five petitions of 1997 as well as the last petition together finally instead of considering the petitioners' request for interlocutory orders for processing the petitioners' application under Section 65 of the Bombay Land Revenue Code for grant of N.A. permission. The six petitions were accordingly heard together and are being disposed of by this common judgment.

6. Mr BM Mangukia, learned counsel for the petitioners submitted that -

6.1 The Collector once having fixed the premium and having passed the orders under Section 43 of the Act on 21.1.1997/27.1.1997, the Collector had no power to review

his orders on any ground and, therefore, the impugned orders dated 30.6.1997 were illegal. Mr. Mangukia placed reliance on the decision of this Court in the case of Bhagwanji Bawanji Patel vs. State of Gujarat & Anr., 12 GLR 156 and on the decision dated 23.9.1987 of this Court in Special Civil Application No. 5605 of 1986.

6.2 Mr Mangukia then submitted that the impugned orders dated 30.6.1997 passed by the Collector cancelling the previous orders dated 21.1.1997/27.1.1997 were ex-facie illegal and arbitrary as the Collector had passed the said orders without issuing any show cause notice to the petitioners or without giving the petitioners any opportunity of being heard.

6.3 It was further submitted that the submission of the proposals for fixation of the price and the amounts of premium to be paid by the petitioners and the final decision of the Collector all this process was carried out without any intervention of the petitioners and, therefore, there was no reason for cancelling the orders dated 21.1.1997 already passed in favour of the petitioners.

6.4 It was further submitted that the premium was correctly fixed by the Collector earlier on the basis of the market value. In fact, it was submitted that even the market value of the lands fixed by the Collector at Rs. 110/- per sq.mtr. was also much higher than what actually should have been fixed as the market price. As the Talati-cum-Mantri had collected the data in respect of the non-agricultural lands in the area during the relevant period and the lands which had far better potentialities of development have been acquired by the Government and/or sold by other parties within the range of Rs. 30/- to Rs. 50/- per sq.mtr. and, therefore, the market value assessed by the Collector in December, 1996 was excessive but still the petitioners accepted the same so as to expedite the development of the lands in question. It was, therefore, submitted that there could not have been any question of any irregularity in the matter of fixation of price or preparation of the proposal. It was also submitted that independent of the letters of the Deputy Town Planner, the petitioners are prepared to satisfy the Court on merits that the price and premium determined earlier are not required to be disturbed.

7. In reply, Mr Sompura, learned AGP for the Collector, Panchmahals, Mamlatdar, Halol and Deputy Town Planner, Baroda Sub Division submitted that -

7.1 The orders of the Collector fixing the amounts of premium and the orders granting permission under Section 43 of the Act were administrative orders and, therefore, it was open to the Collector to cancel the same when the fraud was brought to the notice of the Collector.

It was further submitted that in any view of the matter even in respect of judicial orders, fraud is a good ground for exercising the power of review as a judicial or quasi-judicial authority has inherent power to recall its judgment and order if its is obtained by fraud/forgery as fraud amounts to an abuse of the process of the authority. Reliance has been placed on the decision of the Supreme Court in the case of Indian Bank vs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 and S.P. Chengal Varaya Naidu (Dead) By LRs vs. Jagannath (Dead) by LRs. and Ors., (1994) 1 SCC 1.

7.2 It was submitted that while fixing the premium as per the order dated 19.12.1996 (Annexure "L" to SCA No. 7840, 7844, 7846, 7848 and 8569 of 1997), the Collector had relied upon the letters dated 17.4.1996 from the Deputy Town Planner, Baroda Sub Division to the Mamlatdar, Halol wherein the market value of the lands in question was fixed at Rs. 80/- per sq.mtr. However, it was subsequently brought to the notice of the Collector that in the letters dated 17.4.1996 which were sent by the Deputy Town Planner, Baroda to the Mamlatdar, Halol, he had really fixed the price of the land in question at Rs. 290/- per sq.mtr. It was, therefore, submitted that the letters mentioning the price of the lands at Rs. 80/- per sq.mtr. were either forgeries or in any case not genuine letters which the Deputy Town Planner, Baroda had sent to Mamlatdar, Halol, but letters fraudulently inserted in the file of the department for getting the market value and, therefore, the price of the land was fixed at Rs. 110/- per sq.mtr. Consequently, the amount of premium was fixed at almost 1/3rd value of the legitimate premium - thus causing loss to the public revenue to the tune of Rs. 39 lacs, as the lands are in village Vitthalpura which is on the outskirts of Halol-an industrial town. It was, therefore, submitted by the learned Asstt. Government Pleader that the Collector was justified in cancelling the previous orders dated 21.1.1997/27.1.1997 and the petitions, therefore, deserve to be dismissed.

7.3 It was then submitted that it was not necessary to hear the petitioners as, according to the petitioners themselves, they had not played any part in the

preparation of the proposal or in the decision making process for fixing the premium or the market value of the land in question and, therefore, the petitioners would not be in a position to throw any light in unraveling fraud or detecting the irregularities and, therefore, it was not necessary to issue any show cause notice to the petitioners or to give them any opportunity of being heard.

7.4 Lastly, it was submitted that this Court would not sit in appeal over the decision of the Collector determining value of lands and the premium to be paid. In any case, at present there is no question of examining the legality of the price and premium, as all that is done so far is the cancellation of the orders dated 21.1.1997/27.1.1997. The Collector is yet to pass fresh orders for determining value of the lands and premium to be paid by the landholders under Section 43 of the Act after considering the letters dated 17.4.1996 of the Deputy Town Planner determining the value of the lands at Rs. 290/- per sq.mtr.

8. In rejoinder, Mr Mangukia submitted that neither the Collector nor any other respondent has filed any affidavit in reply and, therefore, the facts being stated by the learned AGP should not be taken into consideration and that the impugned orders deserve to be quashed on the grounds already urged hereinabove.

9. Since no affidavit in reply was filed by any of the respondents and since the learned AGP had pointed out certain facts which, if true, would virtually knock the bottom out of the Collector's previous orders dated 21.1.1997/27.1.1997, during the course of hearing of these petitions, the Court had called upon the learned AGP to furnish a photostat copy of each of the letters dated 17.4.1996 (separate letters for separate Survey Nos.) purporting to be from the Deputy Town Planner, Baroda to the Mamlatdar, Halol fixing the price of the land at Rs. 80/- and also a photostat copy of the office copy of each of the letters dated 17.4.1996 (separate letters for separate Survey Nos.) from the Deputy Town Planner, Baroda to the Mamlatdar, Halol fixing the market value of the land at Rs. 290/per sq.mtr. Thereafter, the learned counsel for the petitioners was given an opportunity to make his submissions either orally or in writing. No further submissions have, however, come forth on the ground that the petitioners had no role to play in the preparation of the proposal by the Mamlatdar, Halol or in the decision making process of the Collector as they were not granted any opportunity of being heard

in the matter of fixation of the price or the premium on the earlier occasion.

10. I have carefully considered the rival submissions of the learned counsel for the parties. In the first place, it is not possible to accept the contention of Mr Mangukia that the orders dated 19.12.1996 of the Collector fixing the amount of premium and the orders dated 21.1.1997/27.1.1997 granting the petitioners permission under Sec. 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 were judicial or quasi-judicial orders. The same were administrative orders. Assuming, however, that they were quasi-judicial orders, even then in view of the fact that those orders are cancelled on the ground of fraud or forgery, it must be held that the Collector did have the power to cancel those orders. In *Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550, the Supreme Court has clearly held that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud, as fraud and justice never dwell together and that fraud and deceit defend or excuse no man. It is held that these powers spring not from the legislation but they are inherent powers.

11. Coming to the facts of the instant case, in view of the case urged on behalf of the respondents, the Court had called upon the learned AGP to show the files for perusal of the Court. It appears from the files that the Deputy Town Planner, Baroda Sub Division had sent four separate letters dated 17.4.1996 to the Mamlatdar, Halol fixing the price of the lands bearing Survey Nos. 150, 151, 153 and 154. Those letters had outward Nos. 2589 (for S.No. 151), 2591 (for S.No. 154), 2593 (for S.No. 153) and 2595 (for S.No. 150), each of them fixing the value of the respective lands at Rs.290/- per sq.mtr. A copy of each of the said letters was also sent to the Senior Town Planner, South Gujarat Regional Office, Baroda. The original file of the office of the Deputy Town Planner, Baroda (respondent No. 3) containing office copies of the aforesaid letters is also shown for perusal of the Court. That file also contains the material referred to by the Deputy Town Planner for arriving at the market value of the land. There is also a file containing a show cause notice dated 17.7.1998 from the Under Secretary in the Revenue Department to I.S. Patel, the then Mamlatdar, Halol to explain why the original letters dated 17.4.1998 from the Deputy Town Planner to the Mamlatdar, Halol showing the value of the



lands at Rs.290/- per sq.mtr. were missing from the file. The photostat copy of the four letters dated 17.4.1998 showing price of the lands in question at Rs.290/- per sq.mtr. produced on the record of these petitions and copies given to the learned Advocate for the petitioners are photostat copies of copies of the letters dated 17.4.1998 sent by the Deputy Town Planner alongwith his letter dated 30.6.1997 to the Mamlatdar, Halol in response to the latter's request. During the course of inquiry by the Collector when the original letters from the Deputy Town Planner to the Mamlatdar, Halol were not traceable in the file of the Mamlatdar, Halol, copies of the letters were called for from the Deputy Town Planner and he had sent copies of those letters showing that the value of the land was fixed at Rs.290/- per sq.mtr. which is also the value mentioned in the office copies of the letters dated 17.4.1996 from Deputy Town Planner, Baroda to the Mamlatdar, Halol.

It is, therefore, clear on a perusal of the files that a serious fraud was played with the Government by certain persons who managed to replace the letters dated 17.4.1996 from the Deputy Town Planner, Baroda to Mamlatdar, Halol for the purpose of showing the market value of the lands at Rs.80/- instead of Rs.290/- as mentioned in the original letters and thereafter the letters showing the price at Rs. 80/- were also subsequently removed from the file, but ultimately traced. It is a very serious matter and the learned AGP has informed the Court that at present preliminary inquiry is going on against the concerned employee, who was working as Mamlatdar, Halol and had forwarded the proposal to the Deputy Collector and in turn to the Collector. It, therefore, transpired that the orders by the Collec

price and the orders on 21.1.1997 and 27.1.1997 granting permission under Sec. 43 of the Tenancy Act were passed on a proposal which was prepared on the basis of the fraudulent letters and, therefore, the Collector had the power as well as the duty to cancel those orders. The consequences of the difference in the value of the lands at Rs.290/- per sq.mtr. and Rs.80/per sq.mtr. are shown in the file as under :-

Spl.C.A.	Survey	Area	Rate	Premium	Premium	Diffe-
No.	No.	H-Are-S	of	on the	paid on	rence
			pre-	basis of	the basis	
			mium	value of	of value	

[illegible]

illegalities in forwarding the proposals for the fixation of the price and on account of the same the Government committed losses in respect of recovering of the premium the order was required to be recalled. With profound respect, it is submitted that the said order is ex-facie arbitrary and ultra vires in view of following facts viz. the Collector has not considered the material aspect that at no point of time the petitioner is privy to the procedure for fixation of the market value of the land in question. The procedure being followed by the office of the Collector is that no sooner the office of the Collector receives an application for conversion of the land from new tenure to old tenure, the office of the Collector would call for necessary data and the proposal from the office of the Mamlatdar. The Mamlatdar directs the Talati and the Circle Inspector to visit the actual site of the land and find out the potentialities and the market value of the land. The Talati would thereafter submit his reports alongwith the data of sales instances of last 5 years. No sooner the said data is received in the office of the Mamlatdar, the Mamlatdar would assess the market value and would forward the proposal to the office of the Collector. The proposal received from the office of the Mamlatdar thereafter would be forwarded in the office of the Deputy Town Planner concerned. The Dy. Town Planner is considered to be an expert so far as the fixation of the market value of the land is concerned. The Dy. Town Planner, considering all the relevant facts, would assess the market value and would send his proposal to the Collector. After receiving the proposal from the office of the Dy. Town Planner, the Collector himself would undertake exercise of assessment of market value of the land independently of the recommendations received from the office of the Mamlatdar and the Dy. Town Planner and in many cases the Collector would fix up either the higher or lower market value according to his own assessment. Though the Hon'ble High Court of Gujarat has held that the market value of land before fixation of the premium cannot be fixed exparte, an opportunity of being heard should be provided to the concerned land holder, in no cases the Collector affords an opportunity of being heard to the landholders. In the present case also, the Collector did follow the same procedure and did

not afford an opportunity of being heard to the petitioners before fixing the market value of the land in question. The market value, therefore, fixed by the Collector, is fixed independently by the Collector and, therefore, it is not open for the Collector to recall and/or to cancel his own order on the ground that some irregularities have been committed by the subordinate office."

(emphasis supplied)

13. The aforesaid averments in the petition clearly highlight the important aspect that according to the petitioners themselves, they had not taken any part in the matter of fixation of price or determination of the amount of premium and, therefore, even if the petitioners had been given a show cause notice, they would not be in a position to throw any light on the question of fraud. The Court would, therefore, not issue any futile writ to direct the Collector to hear the petitioners on the question whether any fraud was committed. Even according to the petitioners, the Deputy Town Planner is considered to be an expert so far as the fixation of the market value of the land is concerned, and the Deputy Town Planner considering all the relevant facts assesses the market value and sends his proposal to the Collector. It would, therefore, make a world of difference if the letters from the Deputy Town Planner mentioning the value at Rs.290/- per sq.mtr. are replaced by the letters mentioning the value of the lands at only Rs. 80/- per sq.mtr. That is already clear from the discussion in para 11 hereinabove.

It is, therefore, obvious that even accepting the petitioners case as urged in the petitions, once the Collector has come to the conclusion that a fraud had been committed in the matter of submission of the proposal by the subordinate office, the orders passed by the Collector fixing the price of the land and determining the amount of premium would definitely have been different if the Deputy Town Planner's letters dated 17.4.1996 fixing the price of the land at Rs.290/per sq.mtr. were brought to the notice of the Collector instead of the Mamlatdar preparing the proposal on the basis of the so called letters from the Deputy Town Planner fixing the price at Rs. 80/- per sq.mtr.

14. In the result, there is no escape from the conclusion that the Collector, Panchmahals was fully justified in passing the impugned orders dated 30.6.1997

cancelling his previous orders granting permission to the petitioners under Sec. 43 of the Act. In above view of the matter, it logically follows that once the previous orders dated 21.1.1997/27.1.1997 are cancelled, the petitioners' subsequent applications made in April, 1997 for N.A. permission in respect of the lands in question have been rightly rejected by the Collector. So also the amalgamation order dt. 12.3.1997 has been rightly cancelled.

15. I have refrained from examining Mr Mangukia's arguments on merits about the price of the lands in question which are on the outskirts of Halol which in an industrial town, as the Collector has not yet determined its value after cancellation of the orders dated 21.1.1997/27..1.1997 possibly on account of the interim orders of status quo passed in the first five petitions.

16. Having considered the rival submissions and in the facts and circumstances of the case, it appears that if at all the petitioners have any right to have their applications considered under Section 43 of the Act, the direction to the Collector to consider the same could be only on the basis of that the Collector proceeds to determine the market value and consequent premium for the lands in question by taking into consideration the letters dated 17.4.1996 of the Deputy Town Planner, Baroda fixing the price of the lands at Rs.290/- per sq.mtr. and without taking into consideration the letters dated 17.4.1996 mentioning price at Rs.80/- per sq.mtr. This direction shall not come in the way of any civil or criminal liability being enforced against the person/s who are found to have committed the aforesaid fraud or have been a party to the fraud.

The Collector shall accordingly consider the petitioner's applications for permission under Section 43 of the Act within three months from the date of receipt of writ of this Court or a certified copy of this order, after taking into consideration the letters dated 17.4.1996 of the Deputy Town Planner, Baroda fixing the market value of the lands at Rs.290/- per sq.mtr.

17. Subject to the aforesaid direction, the petitions are dismissed.

Rule is discharged in each petition with costs which are quantified at Rs. 10,000/- (Rupees Ten thousand only) in one set for this group of petitions.

August 14, 1998 (M.S. Shah, J.)